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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 RSUI INDEMNITY COMPANY, a New  
Hampshire Stock Company; and EVANSTON  
12 INSURANCE COMPANY, an Illinois corporation

13 Plaintiffs,

14 vs.

15 SPORTSMAN'S ROYAL MANOR, LLC, a  
Nevada Limited Liability Company; DOMONIQUE  
16 BROWNING-PALMER, individually; GARY  
BRENNAN, individually;

17 Defendants.

18 SPORTSMAN'S ROYAL MANOR, LLC; GARY  
19 BRENNAN;

20 Counter-claimants,

21 vs.

22 RSUI INDEMNITY COMPANY; EVANSTON  
INSURANCE COMPANY; KAERCHER  
23 CAMPBELL & ASSOCIATES INSURANCE  
BROKERAGE OF NEVADA, LLC; KAERCHER  
24 INSURANCE, AN ALERA GROUP AGENCY,  
LLC; and DOE DEFENDANTS 1-10; ROE  
25 DEFENDANTS 11-20;

26 Counter-defendants.

Case No.: 2:20-cv-01484-RFB-VCF

**STIPULATION AND**  
**~~[PROPOSED]~~ ORDER TO**  
**EXTEND DISCOVERY**  
**DEADLINES AND AMEND**  
**SCHEDULING ORDER (ECF NO.**  
**83)**

**[SECOND REQUEST]**

27 The parties, RSUI Indemnity Company ("RSUI"), Evanston Insurance Company  
28 ("Evanston"), Sportsman's Royal Manor, LLC ("SRM"), Gary Brennan ("Brennan"),

1 Domonique Browning-Palmer (“Browning-Palmer”), Kaercher Campbell & Associates  
 2 Insurance Brokerage of Nevada, LLC (“Kaercher Campbell”), and Kaercher Insurance, an Alera  
 3 Group Agency, LLC (“Kaercher Insurance,” and with Kaercher Campbell, “Kaercher”), by and  
 4 among the undersigned counsel, hereby submit this stipulation requesting that this Court extend  
 5 all deadlines within the Joint Discovery Plan and Scheduling Order (ECF No. 56) as amended by  
 6 the Stipulation and Order to Extend Discovery Deadlines Within Joint Discovery Plan and  
 7 Scheduling Order (ECF No. 83) by an additional 180 days. This is the parties’ second request to  
 8 extend discovery deadlines in this case. This stipulation is entered into in good faith and not for  
 9 purposes of undue delay.

10 The current Scheduling Order provides the following discovery deadlines: Discovery  
 11 Cut-Off: April 11, 2022; Amend Pleadings/Add Parties: January 11, 2022; Initial Expert:  
 12 February 10, 2022; Rebuttal Expert: March 14, 2022; Dispositive Motions: May 11, 2022; Pre-  
 13 Trial Order: June 10, 2022 (subject to LR 26-1(b)(5)). (ECF No. 83.)

14 A new development has occurred in the instant action. Several parties to this instant  
 15 action and the Underlying Action have reached an agreement in principal to settle amongst  
 16 themselves, and a term sheet was recently circulated amongst the settling parties and other  
 17 interested parties including insurance carriers. One of the settlement terms requires that this  
 18 Court approve a good faith settlement motion. Accordingly, a discovery extension is requested.

19 In compliance with LR IA 6-1 and 26-3, the parties submit that good cause exists to  
 20 extend the above-referenced discovery deadlines by 180 days.

21 **1. Discovery completed**

22 On August 10, 2020, RSUI and Evanston filed a Complaint against SRM, Brennan, and  
 23 Browning-Palmer seeking declaratory relief concerning the insurers’ rights and obligations under  
 24 certain policies of excess insurance that RSUI and Evanston issued to SRM and Brennan for  
 25 policy period March 13, 2015, to March 13, 2016, with respect to a claim for personal injury  
 26 damages made by Browning-Palmer arising out of a 2015 shooting at SRM’s property. (ECF  
 27 No. 1.) Browning-Palmer also filed a lawsuit against SRM relating to the above-referenced  
 28 claim that is currently pending in the Eighth Judicial District Court, Clark County, Nevada,

1 entitled *Browning-Palmer v. Hines, et al.*, Case No. A-17-755668-C (the “Underlying Action”).  
2 (Id.)

3 On October 13, 2020, SRM and Brennan filed a Counterclaim against RSUI, Evanston,  
4 and new parties Kaercher arising out of the insurers’ and insurance brokers’ alleged conduct with  
5 respect to their handling of the Browning-Palmer claim and the Underlying Action as well as the  
6 sale of certain general liability and excess insurance policies to SRM and Brennan. (ECF No.  
7 14.)

8 Thereafter, RSUI, Evanston, and Kaercher filed a number of motions to dismiss and to  
9 strike the Counterclaim. (ECF Nos. 21 – 22, 25 – 27, 32 – 34, 38, and 41 – 43.) On November  
10 24, 2020, SRM and Brennan filed a First Amended Counterclaim. (ECF No. 46.) RSUI,  
11 Evanston, and Kaercher again filed a number of motions to dismiss and to strike the First  
12 Amended Counterclaim. (ECF Nos. 58 – 62.) The motions were fully briefed as of February 12,  
13 2021. On August 24, 2021, the Court issued a Minute Order denying the pending motions  
14 without prejudice based on the parties joint representations that they were attending a global  
15 mediation on September 11, 2021. (ECF No. 88.) The Court further stated that if the case did  
16 not settle, the motions could be re-filed, but cautioned that “the arguments raised in these  
17 motions are more appropriate as arguments in a summary judgment motion than in a motion to  
18 dismiss and should therefore be brought in that procedural context if the case does not settle.”  
19 (Id.) On October 8, 2021, the parties submitted a Joint Status Report advising this Court that  
20 although the case did not settle at the September 11, 2021, global mediation, some of the parties  
21 were continuing to discuss a settlement framework that may result in a settlement or partial  
22 settlement. (ECF No. 89.)

23 Counsel for the parties attended a FRCP 26(f) conference on December 16, 2020. A  
24 Joint Discovery Plan and Scheduling Order was submitted by the parties on December 18, 2020  
25 (ECF No. 55), which was entered by this Court on December 21, 2020. (ECF No. 56).

26 RSUI served its Initial Disclosures on January 15, 2021, including producing more than  
27 250 pages of documents. SRM and Brennan served their Initial Disclosures on January 15, 2021.  
28 Browning-Palmer served her Initial Disclosures on January 15, 2021. Kaercher served their

1 Initial Disclosures on January 15, 2021. Evanston served its Initial Disclosures on January 15,  
2 2021, including producing approximately 153 pages of documents.

3 On March 8, 2021, RSUI served written discovery on Evanston, SRM, and Kaercher.  
4 Such discovery included a First Set of Requests for Production to Evanston and Kaercher and a  
5 First Set of Interrogatories and First Set of Requests for Production to SRM.

6 On March 8, 2021, RSUI also served two Notices of Issuance of Subpoena Duces Tecum  
7 to Swett & Crawford and James River Insurance Company.

8 On March 30, 2021, SRM served written discovery on RSUI, Evanston, and Kaercher.  
9 Such discovery included a First Set of Interrogatories and First Set of Requests for Production to  
10 RSUI and Evanston, and First Set of Interrogatories, First Set of Requests for Production, and  
11 First Set of Requests for Admission to Kaercher.

12 On April 27, 2021, Kaercher served its responses to RSUI's First Set of Requests for  
13 Production, including producing approximately 700 pages of documents with a First  
14 Supplement to Initial Disclosures. In April 29, 2021, Kaercher served its responses to SRM's  
15 First Set of Interrogatories and SRM's First Set of Requests for Admission. On May 7, 2021,  
16 Kaercher served its responses to SRM's First Set of Requests for Production. Kaercher served  
17 its Second Supplement to Initial Disclosures on May 18, 2021, including two new documents.  
18 Kaercher served its Third Supplement to Initial Disclosures on July 23, 2021, including  
19 approximately 20 additional pages of documents.

20 On or about June 14, 2021, SRM sent Kaercher a discovery meet-and-confer letter  
21 identifying several deficiencies with Kaercher discovery responses and document production.  
22 Counsel for SRM and Kaercher held a meet-and-confer telephonic conference in late July 2021,  
23 and exchanged a number of emails. The parties are continuing to evaluate these deficiency  
24 issues.

25 The Underlying Action remains pending with continued documentation to be added to  
26 insurers' claims files as the Underlying Action progresses. Discovery activity in this action  
27 related to SRM, Brennan, RSUI, and Evanston is likely to involve disclosure of information,  
28 documents, and materials relevant to the evaluation of Browning-Palmer's claim and/or the

1 ongoing strategy for the prosecution, defense, and resolution of the Underlying Action. As  
2 such, SRM, Brennan, RSUI, and Evanston spent a significant amount of time working out  
3 document production issues to alleviate concerns related to Browning-Palmer as a defendant in  
4 this action. This effort was required to ensure that no party gained an unfair competitive  
5 advantage in the Underlying Action through production of documents in the instant case. As a  
6 result, on June 9, 2021, the parties submitted a Stipulated Confidentiality and Protective Order,  
7 which this Court entered on June 10, 2021 (ECF No. 80). The parties also negotiated another  
8 stipulation to allow for the withholding of documents from Browning-Palmer related to SRM's,  
9 RSUI's, and Evanston's evaluation of the Browning-Palmer claim and/or the ongoing strategy  
10 for the prosecution, defense, and resolution of the Underlying Action. That Stipulation was  
11 submitted on August 2, 2021 (ECF No. 84), and entered by this Court on August 3, 2021 (ECF  
12 No. 85). Based on these ongoing discussions, RSUI and SRM provided each other and  
13 Evanston with multiple extensions to respond to written discovery.

14 On June 11, 2021, SRM served a Subpoena Duces Tecum on CRC Insurance Services,  
15 Inc. fka Swett & Crawford ("Swett & Crawford"), who SRM believes to be a wholesale  
16 insurance broker that procured insurance policies for SRM. On June 30, 2021, Swett &  
17 Crawford advised SRM that it would be producing responsive documents located in its central  
18 insurance files on or before July 12, 2021; however, Swett & Crawford advised that they did not  
19 undertake a search of its emails across the company based on cost and burden concerns. SRM  
20 received Swett & Crawford document production consisting of more than 11,900 pages of  
21 documents in or about late July 2021. SRM produced Sweet & Crawford's entire document  
22 production to all parties in the case in its Third Supplement to Initial Disclosures served  
23 September 7, 2021, and Fourth Supplement to Initial Disclosures served November 30, 2021.

24 On June 23, 2021, RSUI served its responses to SRM's First Set of Interrogatories and  
25 SRM's First Set of Request for Production of Documents, including producing more than 400  
26 pages of documents.

27 On June 23, 2021, Evanston served its responses to RSUI's First Set of Requests for  
28 Production of Documents, SRM's First Set of Interrogatories, and SRM's First Set of Request

1 for Production of Documents. Evanston produced approximately 600 pages of documents on  
2 June 24, 2021.

3 On June 23, 2021, SRM served its responses to RSUI's First Set of Interrogatories and  
4 RSUI's First Set of Requests for Production of Documents, including producing more than  
5 1,600 pages of documents. On August 17, 2021, SRM served its Second Supplement to Initial  
6 disclosures producing another 1,600 pages to all parties except Browning-Palmer pursuant to the  
7 Stipulation and Order governing documents related to the Underlying Action.

8 On June 24, 2021, RSUI served another Notice of Issuance of Subpoena Duces Tecum to  
9 CRC Insurance Services, Inc. f/k/a Swett & Crawford, notifying the parties that it would serve  
10 the subpoena on July 2, 2021.

11 James River Insurance Company has not yet responded to the Subpoena Duces Tecum  
12 issued by RSUI.

13 On or about August 12, 2021, SRM served a deposition subpoena to Deborah Lopez, a  
14 former employee of Kaercher. Based on a number of scheduling conflicts, SRM served a new  
15 deposition subpoena on Ms. Lopez re-scheduling her deposition for September 29, 2021. Ms.  
16 Lopez's deposition was ultimately cancelled. However, SRM has since learned that Ms. Lopez  
17 now resides in Washington state, so counsel will now have to coordinate travel when re-  
18 scheduling Ms. Lopez' deposition.

19 On October 8, 2021, SRM served a second set of written discovery on Kaercher related to  
20 insurance issues, which Kaercher responded to on November 29, 2021. On December 3, 2021,  
21 SRM served a meet-and-confer letter to Kaercher outlining the deficiencies with Kaercher's  
22 responses. On December 17, 2021, Kaercher advised via email that it would be supplementing  
23 its responses. To date, nothing has been provided.

24 Given the current deadlines, the parties need to or have retained their respective experts.

25 **2. Discovery that remains to be completed.**

26 SRM is presently engaged in the meet-and-confer process with Kaercher concerning  
27 Kaercher's responses to SRM's first and second sets of written discovery, document production,  
28 and compliance with Fed. R. Civ. P. 26(a)(1)(A)(iv). Should the parties not be able to work out

1 an agreement, a discovery motion will be necessary.

2 Based on SRM review of documents produced, SRM may also need to serve additional  
3 document subpoenas on other third parties.

4 RUSI is still waiting on James River Insurance Company to respond to the Subpoena  
5 Duces Tecum.

6 The parties still need to take the depositions of a number of fact witnesses, including at a  
7 minimum the Fed. R. Civ. P. 30(b)(6) designee for each party as well as those individual  
8 personally involved in the procuring of the relevant insurance policies. The parties, however,  
9 reserve their right to take other depositions. These depositions need to occur after documents  
10 productions by the parties and third-parties are completed.

11 Expert discovery is also remaining. The parties will also need to take expert witness  
12 depositions, which cannot be taken until experts are disclosed and reports exchanged.

13 **3. Reason why the remaining discovery cannot be completed within the time**  
14 **limits set by the Scheduling Order.**

15 As demonstrated above, the parties have been actively engaged in discovery since  
16 attending the Fed. R. Civ. P. 26(f) conference, including propounding and responding to written  
17 discovery, document productions of thousands of pages of documents, conferring regarding the  
18 protective order and other document production issues, engaging in the meet-and-confer process,  
19 serving subpoena duces tecum and deposition subpoenas on third-parties, and retaining their  
20 respective experts.

21 Nevertheless, since September 2021, the parties have been actively engaged in settlement  
22 discussions with the hope of resolving this matter (either entirely or partially). As such, the  
23 parties have been putting substantial efforts into settlement. On September 11, 2021, the parties  
24 engaged in a full day global mediation before the Hon. Jennifer Togliatti (Ret.), and since that  
25 date, several parties have continued to negotiate a resolution through Judge Togliatti. Several  
26 parties to this instant action and the Underlying Action have reached an agreement in principal to  
27 settle amongst themselves, and a term sheet was recently circulated amongst the settling parties  
28 and other interested parties including insurance carriers. One of the settlement terms requires



that this Court approve a good faith settlement motion. Based on the number of parties involved in the settlement (including their insurance carriers) and that this Court's approval will be necessary, it is clear that the parties require additional time to get all this accomplished and the settlement finalized. As such, the parties request an additional 180 day extension of the current discovery schedule.

This is the parties' second request to extend discovery.

**4. Proposed discovery schedule.**

The parties agree and propose a 180-day extension of the discovery deadlines as follows:

- a) Discovery Cut-off Date: **October 11, 2022** (formerly April 11, 2022)
- b) Amend Pleadings/Add Parties: **July 13, 2022** (formerly January 11, 2022)
- c) FRCP 26(a)(2) Disclosure of Initial Expert: **August 12, 2022** (formerly February 10, 2022)
- d) FRCP 26(a)(2) Disclosure of Rebuttal Expert: **September 12, 2022** (formerly March 14, 2022)
- e) Dispositive Motions: **November 10, 2022** (formerly May 11, 2022)
- f) Pre-Trial Order: **December 12, 2022** (formerly June 10, 2022), but if dispositive motions are filed, 30 days after decision on the dispositive motions or further order of the court.

The parties stipulate and request that the Court enter an order approving the proposed discovery schedule as set forth above.

Dated this 6th day of January, 2022.

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Dated this 6th day of January, 2022.

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9 Dated this 6th day of January, 2022.

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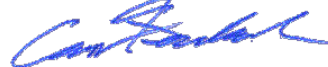
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16 **ORDER**

17 **IT IS SO ORDERED.**

18 

19 UNITED STATES MAGISTRATE JUDGE  
20 DATE: 1-6-2022